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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,532

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James T. Mihm

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03/06/2009

INTEL CORPORATION

c/o CPA Global

P.O. BOX 52050

MINNEAPOLIS, MN 55402

EXAMINER

PATEL, HARESH N

ART UNIT

PAPER NUMBER

2454

MAIL DATE

DELIVERY MODE

03/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Supplemental  
Notice of Allowability**

Application No.

10/820,532

Examiner

HARESH N. PATEL

Applicant(s)

MIHM ET AL.

Art Unit

2454

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/10/2008.
2. ☒ The allowed claim(s) is/are 1 and 3-25.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_.

/HARESH N PATEL/  
Primary Examiner, Art Unit 2454

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Joni D. Stutman-Horn on 3/2/2009.
3. The application has been amended as follows:

### **Amendments to the Claims**

4. Please amend claims 8-15 as follows:
5. Claim 8 (currently amended): A ~~machine-accessible~~ storage medium containing instructions that, when executed, cause a machine to:
  - determine that a firmware image for server management operational code in a baseboard management controller (BMC) in a recipient system needs to be replaced;
  - send a message over a network, wherein the message requests a compatible replacement firmware image;
  - negotiate with a donor system based on a received acknowledgement that the donor system has a compatible image, using a predetermined policy to select the donor system from a set of at least one donor system having a compatible image, wherein at least one donor system of the set of at least one donor system sends an acknowledgement

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to the recipient system in response to the sent message, wherein negotiating with a donor system further comprises instructions to:

receive an acknowledgement from the donor system in response to the message request sent over the network, where an acknowledgement is sent by each donor system having a compatible image;

when more than one acknowledgement is received by the recipient system, select a donor system from the set of at least one donor system sending an acknowledgement, based on the predetermined policy, and when only one acknowledgement is received, select the one donor system sending the acknowledgement; and

receive a compatible image for server management from the selected donor system;

upload the compatible image sent by the donor system to the recipient system; and

update the recipient system server management firmware with the uploaded compatible image.

6. Claim 9 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 8, wherein the network is selected from a group consisting of a wired and unwired network.

7. Claim 10 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 8, wherein the message is sent via an out-of-band (OOB) connection.

8. Claim 11 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 10, wherein a baseboard management controller residing on the recipient system is capable of communicating to donor systems via at least one communication means, wherein the communication means is selected from a group consisting of a local area network (LAN), a wireless access point, a wired inter-chassis management bus (ICMB), and a Bluetooth® protocol wireless network.

9. Claim 12 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 8, wherein the donor system comprises a management console.

10. Claim 13 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 8, wherein the donor system comprises a peer server in the network.

11. Claim 14 (currently amended): A ~~machine-accessible~~ storage medium containing instructions that, when executed, cause a machine to:

receive a message over a network, by a donor system, the message sent by a recipient system requesting an updated server management firmware image, wherein the message is sent to at least one donor system on the network;

determine by the donor system whether a compatible image to the requested updated firmware image is available to fulfill the request;

when the donor system has a compatible image, negotiate with the recipient system, the recipient system to use a predetermined policy to select the donor system

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from at least one donor system having a compatible image, wherein negotiating further comprises instructions to send an acknowledgement and offer to the recipient system when the donor system has a compatible server management image; and

when the donor system is selected from the at least one donor system having a compatible image, by the recipient system, upload the compatible server management image to the recipient system.

12. Claim 15 (currently amended): The ~~machine-accessible~~ storage medium as recited in claim 14, wherein negotiating comprises instructions that cause the machine to:

receive an acceptance acknowledgement for the offer.

### **Amendments to the Specification**

13. The application has been amended as follows:

14. Please amend Paragraph [0001] on page 2 under the Cross-Reference to Related Applications as follows:

The present application is related to co-pending U.S. Patent Application Serial No. 10/821,037, entitled " AUTOMATIC FIRMWARE UPDATE PROXY ," ~~Attorney Docket Number P19143~~, to J. Mihm and W Harmon and assigned to the assignee of the present invention (and filed concurrently herewith).

### ***Terminal Disclaimer***

15. The terminal disclaimer filed on 1/9/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of

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patent number 6,990,577 has been reviewed and is accepted. The terminal disclaimer has been recorded.

16. The terminal disclaimer filed on 10/10/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the notice of allowance issued dated 9/15/08 of the application number 10/821,037 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### **Claim Rejections - 35 USC § 101**

17. In order to overcome 35 U.S.C. 101, “a machine accessible medium” has been replaced with --storage medium-- in the claims 8-15. The specification at paragraph 25, page 14, defining storage medium containing at least hardware, i.e., a storage medium including volatile and non-volatile memory and/or storage elements.

### ***Allowable Subject Matter***

18. Claims 1, 3-25 are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Haresh N. Patel/

Primary Examiner, Art Unit 2454

3/2/09